



U.S. Department of Justice

United States Attorney
Northern District of Ohio

Suite 500
1404 East Ninth Street
Cleveland, Ohio 44114

August 16, 1983

US EPA RECORDS CENTER REGION 5



468462

Honorable David D. Dowd
U. S. District Judge
Federal Court House
Two South Main Street
Akron, Ohio 44308

Re: U.S. v. Chemical Recovery Systems, Inc.,
et al.
Civil Action No. C80-1858

Dear Judge Dowd:

Kindly accept the enclosed executed Consent Decree in the
above-referenced case for lodging at this time.

In accordance with the policy of the Department of Justice,
codified at 28 C.F.R., Sec. 50.7, providing for public comment on all
proposed judgments in actions to enjoin the discharge of pollutants
into the environment, notice of the enclosed Consent Decree will be
published in the Federal Register.

Upon expiration of the public comment period, the undersigned
will advise as to any comments received.

Assuming no substantive comments are received, the enclosed
decree may then be entered by the Court.

Sincerely yours,

J. WILLIAM PETRO,
UNITED STATES ATTORNEY

By Kathleen Ann Sutula
Kathleen Ann Sutula
Assistant U. S. Attorney
(FTS) 942-4394

KAS/fv

Enclosure

cc: David Long, Esq.
Paul Schaeffer
John McPhee

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	NO. C80-1858
)	
Plaintiff,)	
)	
v.)	
)	
CHEMICAL RECOVERY SYSTEMS, INC.,)	
)	
Defendant.)	<u>CONSENT DECREE</u>

The above-captioned Complaint having been filed pursuant to 33 U.S.C. §1251 et seq. and 42 U.S.C. §6901 et seq. on October 7, 1980, and the parties, the UNITED STATES OF AMERICA, for the Administrator of the United States Environmental Protection Agency (hereinafter "U.S. EPA") and CHEMICAL RECOVERY SYSTEMS, INC., an Ohio corporation, (hereinafter "CRS") by their respective attorneys having consented to the entry of this Consent Decree:

NOW, THEREFORE, before taking any testimony, upon the pleadings, and without admission or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the parties and subject matter of this action.

II. APPLICATION OF DECREE

This Decree shall apply to and be binding upon the United States and CRS (the Parties), and the successors and assigns of each, as well as any agencies, instrumentalities, officers, directors, agents and servants thereof acting in their respective official capacities. CRS shall provide a copy of this Decree to each contractor it retains to perform work contemplated in this Decree and shall condition any contract for such work on compliance with this Decree and applicable provisions of the approved plans as contemplated in this Decree. A copy of this Decree shall be lodged with the Recorder of Deeds for Lorain County, Ohio, to provide notice of the history of this Site to prospective purchasers of the CRS site located on 146 Locust Street, Elyria, Ohio (hereinafter "site").

III. OBJECTIVES

The objectives of the parties to this Decree are the abatement of any hazardous conditions at the CRS Site which may have existed both before and after CRS took title to the premises, and the abatement of discharges of contaminants, if any, into groundwater and the Black River from the CRS site.

IV. REPRESENTATIONS

CRS represents that it has, as of the entry of this Decree:

- A. Removed all tanks, drums and other spent solvent containers from the Site;
- B. Ceased the receipt, processing and storage of spent solvents on Site;

- C. Removed all temporary structures, the Brighton Still and the building which housed it as well as the Rodney Hunt Still, all storage tanks and all buildings except the upper warehouse;
- D. Secured the CRS Site by completing the existing fence so as to enclose the facility on all sides except the riverbank in order to prevent access by unauthorized persons;
- E. Filled in the sump under the Brighton Still building and sealed the sump under the Rodney Hunt Still building with concrete;
- F. Conducted soil testing and groundwater studies;
- G. Leveled dikes and rough graded selected areas.

V. REMEDIAL MEASURES

- A. On or before September 15, 1983, CRS shall:
 - 1. Jointly conduct a visual inspection of the site with U.S. EPA technical personnel, to identify spots of visibly contaminated soil if any. CRS shall give 10 working days notice of the date of this inspection to U.S. EPA. U.S. EPA may take samples of such soil for analysis.
 - 2. Excavate all visibly contaminated soil identified by the above inspection;
 - 3. Excavate the perimeter of the Brighton Still building in the northwest corner of the Site, to a depth of one foot, and to a distance of two feet beyond the perimeter of the foundation;
 - 4. Dispose of all soil removed in these excavations in an U.S. EPA approved waste disposal site;

5. Backfill the excavated areas with clean clay-containing fill, as necessary, and grade to conform with existing terrain;
 6. Gently grade the Site towards the river bank to a slope of approximately three percent (3%).
- B. At the next horticulturally appropriate time, CRS will seed the Site with appropriate grasses.
- C. CRS will conduct monitoring of the Black River adjacent to the Site a total of at least four times following entry of this Decree, for the following chemicals, PCBs and volatile organics listed in 40 C.F.F. §116.4, pursuant to §311(b) to (A) of the Clean Water Act, on the following basis:
1. Each monitoring shall consist of at least three samples, one of which is to be taken at the outfall from the sewer at CRS, and one downstream from the said outfall. The location of the third sample shall be determined by CRS. Both river samples shall be depth-integrated composites.
 2. All sampling and analysis shall be conducted according to U.S. EPA protocols, copies of which shall be provided upon request, and at a qualified laboratory, identified in advance to U.S. EPA.
 3. Sampling shall take place once each spring, during the first period of intensive melting of snow, or within 48 hours of the first rainfall of one inch or more after March 1, whichever occurs first; and once each fall,

within 48 hours after the first rainfall of one inch or more following August 15; for two years next following entry of this Decree. At least 8 hours' notice of each said sampling shall be given to the Eastern District Office of U.S. EPA by telephone (216-835-5200).

4. All sample results shall be conveyed to U.S. EPA in writing within ten days of their receipt by CRS.

VI. RESPONSIBILITIES AND LIABILITIES

- A. CRS is ultimately responsible for designing and implementing all remedial measures. No advice, guidance, suggestions or comments by U.S. EPA on plans and reports submitted by CRS shall be construed to relieve CRS of this responsibility or transfer any of CRS' liability or obligation in this action to EPA.
- B. Upon completion of the activities required in paragraph V of this Decree, CRS shall submit a notice to the Director, Waste Management Division, Region V, U.S. EPA, certifying that such measures have been completed in full satisfaction of the requirements of this Decree.
- C. Whenever, under the terms of this Decree, a report or other document is required to be forwarded by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice in writing to the other Party of another individual designated to receive such communications. Reports or documents shall be provided as to U.S. EPA:

Director, Waste Management Division
United States Environmental Protection Agency
Region V (5HR)
230 South Dearborn Street
Chicago, Illinois 60604

As to CRS:

Chemical Recovery Systems, Inc.
c/o David C. Long
Suite 175
24500 Center Ridge Road
Westlake, Ohio 44145

- D. Until termination of the provisions of this Consent Decree, and thereafter in accordance with applicable law, the U.S. EPA, its contractors and consultants, shall have authority to enter the CRS site at all reasonable times with prior notice to CRS, for the purpose of (1) monitoring the progress of CRS in carrying out remedial measures, and (2) observing sampling procedures required under paragraph V of this Decree. U.S. EPA, its contractors, and consultants shall have the authority to require split samples in any such sampling procedure.
- E. All actions required to be taken by this Decree shall be undertaken in compliance with the requirements of applicable federal laws, including the Occupational Safety and Health Act, 29 U.S.C. 651 et seq., and regulations promulgated thereunder.
- F. All data, information, remedial plans, and other documents produced by CRS in the course of implementing this Consent Decree shall be available to the public, unless identified as confidential by CRS in conformance with 40 C.F.R. Part 2.
- The sampling and monitoring data and hydrological and geological

information shall not be considered confidential. Documents or information identified as confidential will be disclosed only in accordance with the confidentiality regulations of 40 C.F.R. Part 2.

- G. No conveyance of title, easement, or other interest in the site shall be consummated by CRS or subsequent holders of any interest in the property without written notice to U.S. EPA and notice to the prospective conveyee as to the conditions of this Consent Decree. After completion of the requirements of this Consent Decree, the copy of the consent decree lodged with the Lorain County Recorder of Deeds shall constitute adequate notice to prospective conveyees for purposes of this Decree.

VII. EXCUSABLE DELAY

The requirements of this Decree shall be implemented within the time limits contained in this Decree unless such performance is impeded by reasons which constitute excusable delay or unavoidable accident. "Excusable delay or unavoidable accident" is any delay in the completion, scheduling, or performance of a particular task, which arises from unforeseeable events beyond the control and without fault or negligence of CRS. CRS shall notify U.S. EPA within 24 hours of the occurrence or discovery of any such event, and submit a proposed revised schedule for compliance. U.S. EPA may then agree to excuse or permit delay of such compliance. If U.S. EPA does not so agree, CRS may petition the Court for an excuse or a delay.

VIII. MODIFICATIONS

The Court shall retain jurisdiction of this matter for the purposes of enabling the Parties to this Decree to apply to the Court for any further order that may be needed to construe, carry out, modify, or enforce compliance with the terms and objectives of this Decree until the termination of this Decree in accordance with the provisions of paragraph X.

IX. STIPULATED PENALTIES

Upon demand by U.S. EPA and upon the appropriate Motion and Order of this Court, CRS shall pay to the United States an amount not to exceed one thousand five hundred dollars (\$1,500) per day for each day that it fails to comply with the provisions of this Consent Decree. In exercising its discretion in seeking to have the Court impose a penalty hereunder, U.S. EPA shall take into account the magnitude of the violation, the duration of the violation, and any mitigating factors.

X. TERMINATION

The provisions of this Consent Decree shall terminate upon CRS' receipt of written notice from U.S. EPA that the remedial and monitoring provisions of this Decree have been successfully completed. Such notice shall issue within 60 days of the date that CRS performs the last act required of it by this Decree and so informs U.S. EPA unless the court orders otherwise.

XI. EXCEPTIONS AND RESERVATIONS

This Consent Decree shall in no way affect any third party actions existing as a part of this lawsuit, nor shall this Decree be construed so as to affect the rights or duties of the parties under the Comprehensive Environmental Response, Compensation and Liability Act. 42 U.S.C. §9601, et seq..

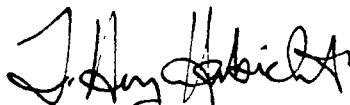
XII. ENTRY

The Parties hereby consent to the entry of this Consent Decree.

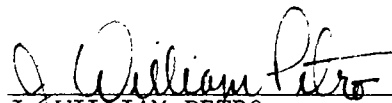
Dated and entered this _____ day of _____, 1983.

UNITED STATES DISTRICT JUDGE

The Parties agree and consent hereto.




F. HENRY HABICHT, II
Acting Assistant Attorney General
Land and Natural Resources Division
United States Department of Justice
Washington, D.C. 20530

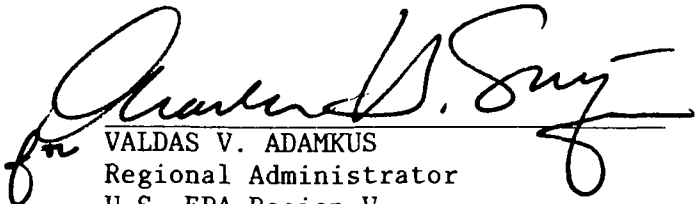


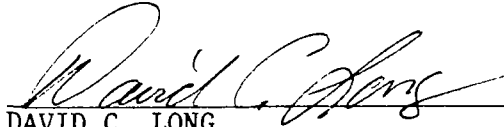
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By: Peter J. Shagena
Secretary